Desai Saksena & Associates

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Friday Tax Alert

From:

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DESAI SAKSENA & ASSOCIATES

No reassessment to disallow lease rent paid on equipment taken on lease if duly allowed in scrutiny assessment: High Court of Gujarat

FACTS OF THE CASE:

- The Assessee filed its return of income which was selected for scrutiny and assessment order was passed under section 143(3).

- Subsequently, the Assessing Officer issued reopening notice against the assessee on the ground that;

  (i) the assessee had claimed lease rent paid on equipment taken on lease as business expenditure and that lease payment included principal plus interest which was not allowable under any provisions of the Act;

  (ii) the assessee had unrealized loss on account of foreign currency transaction which was added as income and on the other hand, it had deducted unrealized gain and also claimed net expenses in profit and loss for computation of book profit. The Assessing Officer sought to reopen assessment on the ground that there was likelihood of any gain on account of revenue expenses incurred by the assessee;

  (iii) depreciation on goodwill claimed by the assessee was not allowable in view of sixth proviso to section 32(1) and section 43(6)(c).

CASE SUMMARY:

- **Background**: GTPL Hathway Ltd. filed its return of income for the assessment year 2017-18, declaring an income of Rs. 39.69 crores, which was later revised to Rs. 83.33 crores. The case was scrutinized, and an assessment order was passed under Section 143(3) of the Income Tax Act, 1961.

- **Reassessment Notice**: The Assessing Officer (AO) issued a notice under Section 148 to reopen the assessment on the grounds that the company had wrongly claimed Rs. 17.37 crores as lease payments under revenue expenditure, improperly accounted for unrealized foreign exchange gains and losses, and claimed depreciation on goodwill, which was later disallowed by a 2021 amendment.

- **Challenge by GTPL Hathway Ltd.**: The company challenged the reassessment notice before the Income Tax Appellate Tribunal (ITAT), arguing that all the issues raised by the AO had already been examined during the original scrutiny assessment and that no new tangible material justified the reopening. They also argued that the amendment disallowing depreciation on goodwill, which became effective in 2021, could not be applied retrospectively to reassess its 2017-18 returns.

- **Court's Decision**: The Gujarat High Court held that the AO had no reason to believe that there was any income that had escaped assessment. The court emphasized that the

reassessment should not be based on future amendments or without any fresh tangible material. The court ruled that the reassessment notice was invalid and upheld the company's challenge.

CONCLUSION:

- In the Instant case, the Hon'ble High Court held that the lease rent payments made by the petitioner in connection with financial lease transactions with CISCO had been consistently accepted as an allowable expenditure in previous assessment years (AY 2012-13, 2013-14, and 2014-15). The petitioner had provided records of notices issued during the regular course of assessment and corresponding assessment orders, which confirmed that the Revenue had accepted the nature of the transactions without any additions.
  Given this established pattern, the court observed that the Assessing Officer should have duly considered the repetitive nature of these transactions. Since the lease rent had been allowed in scrutiny assessments in prior years and no new material or fresh evidence was brought forth to justify a reassessment, invoking reassessment proceedings to disallow the same expenditure was not warranted.

- In the Instant case, the petitioner contended that its treatment of foreign currency transactions was proper, as unrealized gains and losses were reflected in the computation of income without any undue claim of profit or loss. The only expense claimed was **bank charges for hedging foreign currency**, which was classified as **revenue expenditure**. The Assessing Officer sought to reopen the assessment, arguing that there was a potential gain from these revenue expenses. However, the reopening was unjustified, as there was **no fresh tangible material** indicating income escapement. The petitioner's computation remained **consistent and transparent**, with unrealized foreign exchange fluctuations not affecting taxable income. Consequently, the reopening of assessment was held to be without basis.

- With regard to issue of depreciation on goodwill, the provision of section 43(6)(*c*) of the Act was not amended at the relevant point of time for AY 2017-18 and therefore, the amended provision denying the depreciation on goodwill which came into effect from 01.04.2021 could not have formed the basis for re-opening to come to the conclusion that there is escapement of income by claiming of depreciation on goodwill.

GTPL Hathway Ltd. v. Deputy Commissioner of Income-tax Circle 2(1)(1) [2025] 171 taxmann.com 616ssss (Gujarat)

Builder cannot deduct GST from refund of the booking amount if no such clause exists in sale agreement: High Court of Madras

FACTS OF THE CASE:

- A flat in the residential cum commercial building complex of appellant's project was originally booked by the father of the respondent. Pursuant to the same, construction agreements and sale agreements were entered into by and between the parties.

- Subsequently, the father of the respondent had paid certain amount to the appellant/Promoter towards the amount payable for the purchase of the flat. All of a sudden, the respondent's father died. After the sudden demise of the respondent's father, respondent sent an email to the appellant/Promoter informing that he was not interested in purchasing the flat and further requested for immediate return of his money paid.

- In reply to the aforesaid email of the respondent, the appellant/ Promoter sent an email to the respondent requesting for the confirmation of cancellation charges and GST. Aggrieved against the same, the respondent sent a lawyer's notice to the appellant/ Promoter to refund the principal amount along with interest and compensation. In reply to the same, the appellant/promoter stated that as per the provisions of RERA, the appellant/promoter would have the right to deduct the booking amount towards registrations and claims of the complainant, if cancellation charges were refuted on baseless grounds. Moreover, the deduction of GST could not be permitted when the possession was not handed over and when construction of the said flats was under process.

- Aggrieved against the above actions of the appellant/ Promoter, the respondent filed a complaint before the Tamil Nadu Real Estate Regulatory Authority (TNRERA). Thereafter, respondent received a notice from the appellant / Promoter along with original cheque in favour of the respondent after deducting the cancellation charges and the GST. Without prejudice to his rights, the respondent received the above said amount, which was part payment of his claim amount. The TNRERA partly allowed the complaint filed by the respondent, by awarding refund of an amount pertaining to GST and in so far as 10% cancellation charges were concerned, the TNRERA held the same in favour of the appellant / Promoter by stating that the respondent was terminating the Agreement and cancelling the allotment for personal reasons.

- In this regard, the appellant/Promoter as well as the respondent filed separate appeal petitions against the order of the TNRERA. The respondent filed an appeal challenging the cancellation charges, which came to be dismissed at the admission stage itself. Whereas, the appellant / Promoter challenged the order with regard to the refund granted towards GST to the respondent. The Appellate Tribunal *vide* impugned order permitted the respondent to withdraw the entire pre-deposit amount paid by the appellant/ Promoter by holding that the appellant/ Promoter did not take steps to apply for refund. Therefore, aggrieved against such order of the Appellate Tribunal, the appellant/Promoter had preferred the instant appeal.

CASE SUMMARY:

- **Background**: The respondent's father had booked an apartment in the appellant's project and paid a certain amount towards the purchase of the flat. However, due to the sudden demise of the respondent's father, the respondent decided not to purchase the flat and requested a refund of the amount paid by his father.

- **Refund and Deduction**: The appellant refunded the amount to the respondent but deducted 10% of the total sale consideration towards cancellation charges and also deducted GST.

- **Complaint and RERA's Decision**: Aggrieved by the deduction of GST, the respondent filed a complaint before the Real Estate Regulatory Authority (RERA). RERA partly allowed the complaint by awarding a refund of the amount pertaining to GST.

- **Appellate Tribunal's Decision**: The Appellate Tribunal upheld the order passed by RERA. It was noted that there was no specific mention in the Sale and Construction Agreement about the deduction of GST in case of cancellation of the purchase made by the respondent's father. When the appellant sent an email requesting confirmation of cancellation charges and GST, the GST was added for the first time in the email without assigning any valuable reasons.

- **Court's Ruling**: The court held that the respondent could be permitted to withdraw the pre-deposit amount made by the appellant before the Appellate Tribunal under the RERA Act when the respondent's application for a refund of GST amounts was pending before the tax authorities. The court further held that the appellant was not entitled to deduct the amount towards GST before refunding the amounts to the respondent. Therefore, there was no infirmity in the order passed by the Appellate Tribunal, and the appeal against the impugned order was dismissed.

CONCLUSION:

The High Court reviewed the **Sale and Construction Agreements** between the appellant (Promoter) and the first respondent and found no specific clause regarding the deduction of **GST loss** in case of purchase cancellation by the first respondent.

Before the **Appellate Court**, the first respondent submitted an **undertaking** stating that upon receiving the **GST refund** from the Department, he would immediately pay the refunded amount to the appellant (Promoter). Convinced by this assurance, the **Appellate Court** allowed the first respondent to withdraw the **pre-deposit amount** along with accrued interest. Additionally, the first respondent was directed to update the appellant on the progress of the **GST refund application every two weeks**.

The High Court upheld the **Appellate Court's decision**, affirming the Tamil Nadu Real Estate Regulatory Authority (**TNRERA) order** and dismissing the appellant's appeal, finding

no reason to interfere. Consequently, the **Civil Miscellaneous Appeal was dismissed with no costs**, and related petitions were closed.

[Emerald Haven Realty Developers (Paraniputhur) (P.) Ltd. v. S.V. Ramesh [2025] 171 taxmann.com 321 (Madras)]